

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

October 13, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 23, 2005

Case Number: TSO-0211

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor in a position that requires the individual to maintain a security clearance. In 2003, the contractor informed the DOE that the individual's pay was being garnished. Upon receiving this information, and in light of the individual's previous financial difficulties, the local DOE security office summoned the individual for a Personnel Security Interview (PSI). After this November 2003 PSI, DOE security referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report setting forth the results of this evaluation and sent the report to DOE security. Subsequently, the Manager of the local security office reviewed this report and the other information in the individual's file and determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The Manager suspended the individual's access authorization and informed the individual of this action in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization. The individual requested a hearing on

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

II. STATEMENT OF DEROGATORY INFORMATION

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Paragraph (h) defines as "derogatory" information indicating that the individual suffers from an "illness or mental condition which, in the opinion of a psychiatrist . . . , causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Pursuant to this paragraph, the Letter cites the DOE psychiatrist's evaluation, in which he concludes that the individual suffers from Pathological Gambling Disorder, which has caused, and is likely to continue to cause, a significant defect in her judgement or reliability.

Under paragraph (l), information is derogatory if it indicates that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that [she] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [she] may be subject to pressure, coercion, exploitation or duress which may cause [her] to act contrary to the best interests of the national security. Such conduct or circumstances include . . . a pattern of financial irresponsibility" 10 C.F.R. § 710.8(l). As support for this paragraph, the Notification Letter cites information indicating that the individual filed for Chapter 13 Bankruptcy in January 1999, which was dismissed because the individual fell behind on her payments, and that she began working with an attorney to file for Chapter 7 Bankruptcy in November 2003. The Letter further states that the individual has had her wages garnished twice for the repayment of debt, that she owes approximately \$3,000 in federal and state taxes for 2001 and 2002, and that she would take out personal loans or borrow money from friends to gamble.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or

reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has not made this showing, and that her clearance should therefore not be restored at this time.

IV. THE HEARING

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, through her own testimony and that of her supervisor, a co-worker and a gambling disorder treatment counselor, the individual attempted to demonstrate that her financial house is in order and that she is now rehabilitated from Pathological Gambling Disorder. The DOE psychiatrist testified for the DOE.

The individual started off by testifying that her financial issues “have all been dealt with,” and that she is no longer in debt. Hearing Transcript (Tr.) at 28-29. She indicated that under the terms of her original Chapter 13 bankruptcy, she was to make payments to a trustee, who was to pay her creditors. However, she said, her bills “weren’t getting paid,” so she decided to stop making payments. The Chapter 13 bankruptcy was dismissed in August 2001 because of this cessation of payments. Tr. at 30-31. About a year later, she said, she filed for a Chapter 7 bankruptcy, and all of her debts except for her taxes and secured loans were discharged in October 2004. Tr. at 31. She has now satisfied these obligations. Tr. at 32.

The individual then discussed her current financial condition. She indicated that she is able to pay her bills now because she is no longer gambling and because her family has cut back on its spending. Tr. at 36. These cutbacks have been necessary because she and her daughter (who works only three hours per day) are the sole wage earners for their combined household, which also includes the individual’s husband and two grandchildren and two foster children. Since the individual’s declaration of bankruptcy under Chapter 7, she has begun receiving payments from the state to assist in the rearing of the two foster children. Tr. at 38. Also easing her financial

condition is the fact that the money that she used to spend on gambling, which in 2002 amounted to at least \$2,000, can now be used to meet household needs. Tr. at 39-40.

The individual then testified about her attempts to address her gambling problem. She said that she realized that she had a problem when she took a test that was distributed by a member of Gamblers Anonymous (GA) outside of a local casino. According to the individual, positive answers to seven of the questions is an indicator of gambling problems, and she answered “yes” to 16 of the 20 questions. Tr. at 41.² She then cut back on her gambling “a lot,” especially after she began caring for the two foster children. Tr. at 72. The individual indicated that she last gambled in October 2004. Tr. at 44. She did not, however, seek counseling until May 2005, at a local outpatient facility. Tr. at 47, 48. During these counseling sessions, the individual learned how to deal with the stressors in her life without attempting to escape them through gambling. Tr. at 60. Unlike the period of time before the counseling, she testified that now “I put myself in front [of others’ needs]. I’m first. . . . And the stressors that I have in my family, well, due to [her husband’s] alcoholism and stuff like that, I’ve been able to accept those. I’m able to say, ‘Well, let me do this first.’ My life comes first.” Tr. at 66. She added that getting rid of her bills has also “made a lot of difference” in relieving her stress. *Id.*

The individual’s gambling disorder treatment counselor also testified. She said that the individual began seeing her in May 2005, and that the individual has been “pretty motivated” in that she has committed to working on the issues that have been outlined in her treatment plan. Tr. at 47. That plan includes individual sessions with the counselor and weekly women’s group meetings at the treatment facility. During these individual and group sessions, the counselor testified, the issues that have been addressed include the individual’s “co-dependency . . . and also education about compulsive and problem gambling, as well as relapse prevention and being able to identify warning signs and possible relapse triggers.” Tr. at 50. She further indicated that the co-dependency issues revolved not only around the individual’s alcoholic spouse, but around other family members whose problems and needs the individual would place ahead of her own. The counselor added that the individual has started to “set boundaries more with other people in her family . . . and taking care of herself and putting herself first.” Tr. at 50-51. The individual is an “escape gambler,” she said, whose wagering “provides her that escape from co-dependency and other issues.” Tr. at 51. The counselor explained that escape gamblers seek release from the stresses in their lives, and are “compulsive in that they can’t stop on their own, or have lost control with limits.” Tr. at 58. Part of the individual’s therapy, she continued, has dealt with

²The individual gave varying answers as to the year that she took this test. Initially, she said that she “took it years ago . . . maybe . . . in, I don’t know, early - - no, not early ‘90s, 2000 maybe.” Tr. at 42. However, she later indicated that she took the test in September 2003. Tr. at 71.

alternative methods of coping with stress, such as “taking time for herself, ‘journaling,’ reading literature” and talking about her feelings. Tr. at 60.

When asked to estimate the individual’s chances of relapsing, she was unable to do so. However, she did say that “problem and compulsive gamblers are at greater risk for relapse . . . than alcohol or drug addicts.” Tr. at 56. She added that as the individual “continues to come and to get services and address the underlying issues,” her chances of relapse “lower[] dramatically. . . . [S]ome clients in treatment . . . pretty much refuse to address what the real issue is, and I don’t see that with her. . . . So I think [her chance of relapse] is lower . . . in that she at this point doesn’t seem to be withholding any information from me pertinent to her recovery.” *Id.* Contrary to the individual’s testimony, the counselor further stated that the individual reported to her that her last incident of gambling occurred in February 2005. Tr. at 55.

The individual’s supervisor and a co-worker also testified. They stated, in general, that the individual was a good worker and a person of good character, and that they were unaware of any current financial difficulties or gambling activities on her part. Tr. at 7-25.

The DOE psychiatrist then testified. He stated that his diagnosis of the individual was based on his application of the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, and that he still considers the individual to be a pathological gambler. He explained that the diagnostic criteria for this disorder “don’t have time frames around them like substance disorders do, like [within] one year [of] the abuse of the substance, the diagnosis might expire. . . .” Tr. at 83. Pathological gambling, he added, “is considered something probably that once you have met the diagnostic criteria, you’re always thereafter at some risk for relapse, more than a person who has never had that problem.” *Id.* However, Pathological Gambling is “a disorder that you can be rehabilitated from,” unlike other mental illnesses such as schizophrenia. Tr. at 85-86.

He further stated that it is much more difficult to determine when a pathological gambler is exhibiting adequate reformation or rehabilitation than it would be for an alcoholic or drug addict because there has been a lot more research, and consequently there is more data, on the risk of relapse of substance abusers. Tr. at 86. Although he took note of the testimony of the gambling disorder treatment counselor that problem gamblers relapse more frequently than alcoholics or drug addicts, he indicated that he would apply the one year’s abstinence milestone that is commonly used with substance abusers to pathological gamblers such as the individual. “A lot of relapses occur within that first year. And once a person has made it to a year, the survival rate, if you will, improves.” Tr. at 87.

Applying this standard to the individual, he opined that she is not yet demonstrating adequate evidence of rehabilitation or reformation. He noted the discrepancy between the 10 months of abstinence from gambling, as of the date of the hearing, claimed by the individual and the six months of abstinence reported by the counselor, and stated that although he tends to believe the lower figure, neither period of time is sufficient to show rehabilitation or reformation, especially given the fact that she has only been receiving therapy for three months. Tr. at 87-88. He also concluded that there are several negative prognostic factors that apply to the individual. Among them are the length of time that it took for the individual to seek counseling after she realized that she had a gambling problem, and the continued presence of many of the same stressors that led the individual to seek escape through gambling. Tr. at 88.

V. ANALYSIS

After reviewing the testimony described above and the record in this matter as a whole, I find that the DOE's security concerns under both paragraph (h) and paragraph (l) remain unresolved. Although the evidence shows that she has made substantial progress in addressing both her gambling and financial problems, I believe that the chances of a recurrence of these problems remains unacceptably high at this point in her recovery. My reasons for these conclusions are set forth below.

A. PARAGRAPH (H)

Based on the testimony produced at the hearing, it is evident that the individual realizes that she has a very serious gambling problem. Accordingly, she has sought professional help, and the record indicates that, as of the date of the hearing, she had refrained from gambling for at least six months.

Important as these mitigating factors are, I find them to be outweighed by the testimony of the DOE psychiatrist, by certain aspects of the testimony of her own expert witness, and by the fact that many of the stressors that the individual was apparently attempting to escape through gambling still exist in her life. As set forth above, the DOE psychiatrist compared and contrasted pathological gambling with substance abuse disorders, and concluded that the "one year's abstinence" milestone that is often used by professionals in treating substance abusers is applicable in this case. Since the individual had only been in treatment for three months and had been abstaining from gambling for significantly less than one year, he concluded that she was not demonstrating adequate rehabilitation or reformation from her gambling disorder.

Although she indicated that the individual was making progress, the gambling disorder treatment counselor would not estimate the individual's chances of suffering a relapse. Tr. at 56. She did state, however, that in her experience, "problem and compulsive gamblers are at greater risk for relapse, and actually relapse . . . more frequently than alcohol or drug addicts." *Id.* The implication of this statement is that it may be advisable to apply a more stringent standard when assessing the rehabilitation of problem gamblers than would be applicable to substance abusers and addicts. In any event, it was apparent from her testimony that the counselor considered the individual's rehabilitation to be a work in progress and not an established fact.³

The counselor also characterized the individual as an "escape gambler," and I am concerned that the stressors that she was attempting to escape are still present in her life. By her own admission, her husband is an alcoholic who does not want professional help for his affliction. Tr. at 67. Moreover, of the seven people in her household, the individual and her daughter are the only ones who are gainfully employed, and the daughter works only "two or three hours a day." Tr. at 66-67. These are stressful situations that I fear could contribute to a relapse on the part of the individual. I recognize that, through her counseling, the individual has learned alternate methods of coping with stress, and that she is now receiving some financial aid from the state for the care of the two foster children. However, like the DOE psychiatrist, I believe the individual needs additional counseling, and, more importantly, needs to demonstrate over a longer period of time that she can cope with the stresses in her life without resorting to gambling. Accordingly, I conclude that the individual has failed to adequately address the DOE's security concerns under paragraph (h).

B. PARAGRAPH (L)

As is the case with her gambling addiction, the individual has made significant progress in addressing her financial problems. The individual is now receiving a total of \$300 per month for the support of the two foster children who are in her care, money that she was not receiving at the time of her bankruptcy. Also, the individual demonstrated that she has completely paid off the debts that were not extinguished through her Chapter 7 proceeding. Individual's Exhibits A-1 through B-3.

³The counselor testified that "right now it appears that the significant factors with [the individual's] development of addiction appears . . . to be codependency, *so we're addressing that*, and also education about compulsive and problem gambling, as well as relapse prevention, and being able to identify warning signs and possible relapse triggers." Tr. at 50 (italics added). Later, she said that "it's going to take a lot of effort on her part to continue to address [her rehabilitation]. *But once we help her move through whatever those issues are, . . .* , then they're less likely to take part in gambling in any form." Tr. at 51-52 (italics added).

However, the security concerns that are raised by past financial difficulties are not necessarily resolved when an individual pays off all of her creditors. This is because such repayment of debt does not, in and of itself, definitively establish that she will conduct her future financial affairs in a responsible manner. *See, e.g., Personnel Security Hearing, Case No. VSO-0132, 26 DOE ¶ 82,780 (1997)*. In fact, previous decisions issued by OHA Hearing Officers have found that once a pattern of financial irresponsibility has been found, the individual must demonstrate a sustained, new pattern of financial responsibility for a period of time sufficient to demonstrate that a recurrence of the past pattern is unlikely. *Personnel Security Hearing, Case No. VSO-0108, 26 DOE ¶ 82,764 at 85,699 (1996)*; *Personnel Security Hearing, Case No. VSO-0240, 27 DOE ¶ 82,790 (1999)*. In this case, the individual's gambling played a major role in causing her financial difficulties. Tr. at 27. Given the facts that it has been less than one year since her debts were discharged in the Chapter 7 bankruptcy and only six to ten months since her last wager, the individual has had insufficient time to establish a sustained pattern of financially responsible behavior. I am particularly concerned that a relapse in her recovery from pathological gambling will lead to a recurrence of her financial difficulties. As previously described, I believe her chances of such a relapse to be unacceptably high at this stage of her recovery. Given this belief, I cannot conclude that the individual has demonstrated that a recurrence of her financial problems is unlikely. The DOE's security concerns under paragraph (l) therefore remain unresolved.

VI. CONCLUSION

Based on the factors discussed above, I find that the individual has failed to adequately address the security concerns set forth in the Notification Letter. Accordingly, I conclude that the individual has not demonstrated that restoring her clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: **October 13, 2005**